IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

LEANNA S.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND C.S.-G.,
Appellees.

No. 2 CA-JV 2018-0143
Filed December 17, 2018

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pinal County
No. S1100JD201600107
The Honorable DeLana Fuller, Judge Pro Tempore

AFFIRMED

COUNSEL

Harriette P. Levitt, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Laura J. Huff, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Eppich authored the decision of the Court, in which Presiding Judge Vásquez and Judge Espinosa concurred.

E P P I C H, Judge:

¶1 Leanna S. appeals from the juvenile court's order terminating her parental rights to her son, C.S.-G., born in July 2014, on the ground he had been in court-ordered care for longer than fifteen months.[1] *See* A.R.S. § 8-533(B)(8)(c). On appeal, Leanna argues there was insufficient evidence to support termination and maintains the court erred in finding the Department of Child Safety (DCS) had provided adequate reunification services. We affirm.

¶2 We view the facts in the light most favorable to sustaining the juvenile court's ruling. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, ¶ 2 (2016). In June 2016, DCS removed C.S.-G. from Leanna's care when his half-sister tested positive for methamphetamine at birth; C.S.-G., who was found to be underweight and presented with several developmental and speech delays, had also been born substance exposed. C.S.-G. was found dependent that same month. DCS provided Leanna with a variety of services, including a substance-abuse assessment, treatment and testing; individual counseling; a psychological consultation; parenting classes; parent-aide services; transportation; and supervised visits. In addition, Leanna was required to seek and maintain safe housing and a stable income.

¶3 During the course of the dependency, Leanna moved approximately eight times, and tested positive for drugs or failed to comply with required drug testing several times. In January 2018, the juvenile court changed the case plan to severance and adoption. DCS moved to terminate Leanna's parental rights based on fifteen-month-time-in-care and chronic-substance-abuse grounds. *See* A.R.S. § 8-533(B)(3), (8)(c). In July 2018, after

[1] The juvenile court also severed the parental rights of C.S.-G.'s father, who is not a party to this appeal. In addition, C.S.-G's half-sister, who was reunited with her biological father, is not a party to this appeal.

a contested severance hearing,[2] the court granted DCS's motion on the time-in-care ground. The court found that although DCS had provided appropriate reunification services, Leanna had nonetheless been unable to maintain a significant period of sobriety or to secure safe and stable housing for C.S.-G., and it also found that termination was in C.S.-G.'s best interests. This appeal followed.

¶4 A juvenile court may terminate a parent's rights if it finds clear and convincing evidence of a statutory ground for severance and finds by a preponderance of the evidence that termination is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41 (2005). "[W]e will affirm a termination order that is supported by reasonable evidence." *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18 (App. 2009). That is, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10 (App. 2009).

¶5 To terminate Leanna's parental rights pursuant to § 8-533(B)(8)(c), DCS must demonstrate C.S.-G. "has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order" and Leanna "has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and there is a substantial likelihood that [she] will not be capable of exercising proper and effective parental care and control in the near future." Additionally, DCS was required to demonstrate that it had "made a diligent effort to provide appropriate reunification services." § 8-533(B)(8); *see also Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, ¶ 13 (App. 2005).

¶6 At the severance hearing, DCS caseworker Rose Raymond acknowledged that children who are born substance exposed, like C.S.-G., may require long-lasting services due to symptoms from their substance exposure at birth. She also testified that Leanna "has no stable housing and she's not financially stable to care for [C.S.-G.]," who requires approximately three to five appointments weekly. C.S.-G.'s therapist, Jessica Drachenberg, testified that C.S.-G. had made progress in his

[2]Although the transcript from the first day of the hearing in March 2018 is not part of the record on appeal, we note that the proceeding on that day, during which the juvenile court apparently "took jurisdictional testimony," does not appear to be legally significant to the issues before us on appeal.

placement and at his special developmental preschool and that he needs "consistency, stability, predictability and safety and security" at home and at school. Both Raymond and Drachenberg testified that C.S.-G. may regress if he does not continue to receive his therapies. Leanna testified that she had not investigated whether the preschool near her current home is appropriate for C.S.-G.'s special needs, testimony the juvenile court characterized as placing C.S.-G.'s needs "on the back burner." And, in a May 2018 addendum report to the juvenile court, DCS recommended that permanency for C.S.-G. "be established as soon as possible" due to his special needs.

¶7 At the conclusion of the severance hearing, the juvenile court summarized the extensive services DCS had provided to Leanna, and concluded she had been unable to remedy the circumstances that had caused C.S.-G. to be in an out-of-home placement, also noting that Leanna had an extensive history of substance abuse and that C.S.-G. and his half-sister had been born exposed to methamphetamine.[3] The court credited Leanna with maintaining sobriety for "a relatively short period of time [since November 2017]," but nonetheless found she had lived in an "inordinate amount of places," and thus concluded:

> [C.S.-G.] needs significant structure; does not tolerate change; suffers from developmental delays, which cause him to need [Division of Developmental Disabilities] services, including but not limit[ed] to speech therapy, occupational therapy, mental-health therapy and a developmental preschool of which mother has not been able to locate near her recent new residence.
>
> [C.S.-G.] requires, at least, five appointments per week; mother has failed to evidence any ability to care for the special needs of the child; there's a substantial likelihood that the mother will not be capable of exercising proper parental care and control in the near future pursuant to

[3]Leanna asserts the juvenile court's written order does "not mirror the statements made by the trial court at the conclusion of the trial." To the extent we understand this argument, which the record does not seem to support, we reject it.

> A.R.S. [§] 8-533(B)(8)(c); mother has been given 24 months to remedy the circumstances which brought her child into care; mother has failed to obtain safe and stable housing for any period or length of time [or] evidenced the abilities to meet the special needs of her child; future services at this time would be futile and would further delay the permanency of [C.S.-G.]

¶8 On appeal, Leanna asserts "a parent's lack of long-term housing, standing alone, is not grounds for termination of parental rights." She argues her "housing difficulties" did not arise because of drug use, rather, because DCS directed her to move away from C.S.-G.'s father, which then led to her financial difficulties. At the time of the severance hearing, however, Leanna was unable to demonstrate that she could maintain safe and stable housing, which was not only required by her case plan but was necessary to accommodate C.S.-G.'s continued growth in light of his age and special needs; C.S.-G. required "consistency, stability, predictability and safety and security" at home and at school. *See Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, ¶ 22 (App. 2007) ("circumstances" in § 8-533(B)(8) means "'those circumstances existing at the time of the severance' that prevent a parent from being able to appropriately provide for his or her children" (quoting *In re Maricopa Cty. Juv. Action No. JS-8441*, 175 Ariz. 463, 468 (App. 1993))).

¶9 Notably, Raymond opined that due to Leanna's frequent moves and inability to maintain a stable lifestyle, she would be unable to care for C.S.-G., including taking him to his appointments and maintaining consistent services for him. *See Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, ¶ 12 (2018) ("The 'child's interest in stability and security' must be the court's primary concern." (quoting *Demetrius L.*, 239 Ariz. 1, ¶ 15)). Raymond also testified that Leanna's history of substance abuse would place a young child with special needs, like C.S.-G., at greater risk for complications related to his safety and health, both physical and emotional.

¶10 Leanna fails to support her claim that the juvenile court erred by terminating her parental rights based "only" on the absence of stable housing and her financial situation. Importantly, taken in the context of C.S.-G.'s special needs, the court necessarily relied upon Leanna's failure to fully benefit from services or establish a stable home as demonstrating her failure to remedy the circumstances that caused C.S.-G. to be in an out-of-home placement. Nor does Leanna argue those findings were not

supported by the evidence. Because the record contains ample evidence supporting the court's finding that Leanna failed to resolve the issues preventing the return of C.S.-G., her argument amounts to a request that we reweigh the evidence on appeal, which we will not do. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶¶ 4, 12 (App. 2002).

¶11 Leanna also argues DCS failed to provide her with reasonable services, specifically, the opportunity to work with C.S.-G.'s therapist or to attend family therapy or trauma parenting classes, despite the recommendation that such services be provided. DCS does not dispute it was required to make diligent efforts to provide Leanna with appropriate reunification services. *See* A.R.S. §§ 8-533(B)(8), 8-846(A). As DCS points out, however, Leanna apparently did not raise this issue below and has therefore waived it on appeal.[4] *See Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, ¶ 16 (App. 2014) (parent who fails to object to adequacy of services waives review of the issue). Additionally, Leanna's failure to object to the adequacy of the services provided in a timely manner in the juvenile court "needlessly injects uncertainty and potential delay into the proceedings." *Id.* ¶ 16.

¶12 Accordingly, we affirm the juvenile court's severance of Leanna's parental rights to C.S.-G.

[4] In fact, at the conclusion of the termination hearing, when the father's attorney objected to the services provided "for the record," Leanna's attorney expressly told the juvenile court he did not share that objection.